

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**GNLV CORP. d/b/a GOLDEN NUGGET
LAS VEGAS**

Employer

and

Case 28-RC-216070

**GENERAL TEAMSTERS, AIRLINE, AEROSPACE
AND ALLIED EMPLOYEES, WAREHOUSEMEN,
DRIVERS, CONSTRUCTION, ROCK AND SAND,
LOCAL 986, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

Petitioner

**SUPPLEMENTAL DECISION AND
DIRECTION OF ELECTION**

On March 7, 2018,¹ General Teamsters, Airline, Aerospace and Allied Employees, Warehousemen, Drivers, Construction, Rock and Sand, Local 986, affiliated with Teamsters Local 986 (Petitioner) filed a petition seeking to represent a unit of employees employed by GNLV Corp. d/b/a Golden Nugget Las Vegas (the Employer).

The matter proceeded to hearing before a hearing officer on March 15. On March 26, the Region issued a Decision and Direction of Election (Decision) scheduling an election for March 30. On March 27, the Employer filed with the Board a Request for Review of the Decision and a Motion for a Stay of the Election (Motion). Both matters are currently before the Board. On March 28, Petitioner filed an Opposition (Opposition) to the Motion. Because the Motion alleges that procedural defects make the scheduled election date of March 30 improper, the Region shall treat the Motion as a motion for reconsideration of the election date set by the Decision.

In its Motion, the Employer argues that the election in this matter should not be held on the currently-scheduled date for two reasons: (1) at hearing, the parties agreed that April 19 was an acceptable date to hold the election, and (2) the notice of election was not provided to the Employer with sufficient time to allow it to be posted in conformity with the requirements of Section 102.62(e) of the Board's Rules and Regulations (Board's Rules).

The transcript in this matter supports, and Petitioner acknowledges, that the parties agreed during the March 15 hearing that April 19 was an acceptable date to hold the election.

¹ All dates hereafter are 2018 unless otherwise noted.

However, this oral agreement occurred only after the matter had proceeded to a hearing, at which point the date, time, and location were within the Region's sole discretion. *See Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011) (and cases cited therein). Absent an approved stipulated election agreement, the Region is not bound by the preferences of the parties. *See T & L Leasing*, 318 NLRB 324, 326 n.13 (1995). Rather, Section 102.67(b) of the Rules charges the Region with setting the election for the earliest practicable date. The Employer's argument that the Region acted improperly in scheduling the election for a date other than one that the parties agreed at hearing would be acceptable is without merit.

Next, the Employer claims, and the Region acknowledges, that the notices of election were not supplied to the Employer until after the standard closing hour of business – i.e. 5:00 p.m. In communication with the Region, the Employer's counsel represented that the notices of election were not posted by 12:01 a.m. on March 27. Section 103.20(a) of the Board's Rules requires the notices to be posted "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 102.67(k) of the Board's Rules provides that a party is estopped from objecting to the non-posting of notices if that party is responsible for the non-posting. As established by the record, the Employer has employees, including front desk employees, present at the Employer's facility 24 hours per day. It is plausible that the Employer could have posted the notices in time to satisfy the requirements of Section 103.20(a) of the Board's Rules. In addition, Petitioner waived in its Opposition any objections to the election on the basis of untimely posting. However, it is not clear that the failure to timely post the notices was entirely caused by the Employer. As such, the Employer might still object to the election as currently scheduled. *See Club Demonstration Services*, 317 NLRB 349 (1995). In order to avoid wasting Board resources and acknowledging delivery of the notices of election outside of normal business hours, the Region will order the election to be held at the next earliest practicable date.

I. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by General Teamsters, Airline, Aerospace and Allied Employees, Warehousemen, Drivers, Construction, Rock and Sand, Local 986, International Brotherhood of Teamsters.

A. Election Details

The election will be held on Wednesday, April 4, 2018 from 7:00 a.m. to 10:00 a.m. and from 5:00 p.m. to 8:00 p.m. in the Merion Convention Room at the Employer's facility, located at 129 East Fremont Street, Las Vegas, Nevada.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 11, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must have been *received* by the regional director and the parties by **March 28, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

II. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 29th day of March 2018.

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet, Regional Director